

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:

BARRY LEE DENNIS,

DEBTOR

§
§
§
§
§

CASE NO. 03-50222-RLJ-7

MEMORANDUM OPINION AND ORDER

Hearing was held on August 20, 2003, on the Trustee's objection to the Debtor's exemption claim under § 522(d)(1) of the Bankruptcy Code to a lien interest in the Debtor's former marital residence. The matter was submitted on stipulated facts set forth in the Joint Pre-Hearing Order which was entered by the court on August 21, 2003. The court adopts the parties' stipulated facts.

The court has jurisdiction of this proceeding pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A), (B). This Memorandum Opinion contains the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and FED. R. BANKR. P. 9014.

As stated in the Pre-Hearing Order, a copy of which is attached hereto, the issue before the court is whether the Debtor's lien against his former marital residence, which such lien was awarded to him pursuant to a divorce decree entered in February, 2000, may be exempted from his bankruptcy estate under 11 U.S.C. § 522(d)(1). As both the Debtor and the Trustee acknowledge, the opinion of *In re Johnson*, 288 B.R. 130 (8th Cir. BAP 2003) is directly on

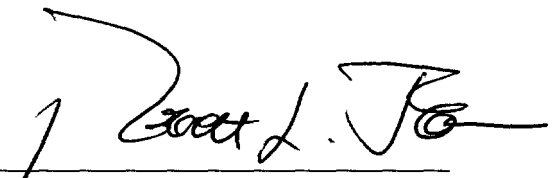
point. The Debtor's former marital residence was awarded to his ex-wife and is presently occupied by his former spouse and the Debtor's minor children. The *Johnson* court held that a debtor may exempt, under § 522(d)(1), a lien interest in a former marital residence as an "aggregate interest, not to exceed \$17,425 in value, in real property that . . . a dependent of the debtor uses as a residence" *Id.*

In *Johnson*, there was no dispute on whether the debtor's minor child qualified as a dependent under the statute. The Trustee does not concede such point here. In fact, the parties stipulated that Mr. Dennis does not claim his minor children as dependents on his federal income tax returns. The court notes, however, that Mr. Dennis's minor children live with their mother in the home and Mr. Dennis pays child support. Exemption statutes are to be construed liberally in the debtor's favor. *In the Matter of Barker*, 768 F.2d 191, 195 (7th Cir. 1985). Most courts that have construed the term "dependent" have done so in a fashion that is consistent with the liberal construction to be accorded exemption statutes. *See, e.g., In re Meler*, 295 B.R. 625, 630-31 (Bankr. D. Ariz. 2003) (evaluating whether debtor had a legal or mere moral obligation to support purported dependent); *In re Rigdon*, 133 B.R. 460, 465-66 (Bankr. S.D. Ill. 1991) (rejecting any statutory test for dependent and applying a plain language definition of dependent); *In Re Dunbar*, 99 B.R. 320, 324 (Bankr. M.D. La. 1989) (applying the plain meaning of dependent to be, "a person who reasonably relies on the debtor for support and whom the debtor has reason to and does support financially"); *In re Tracey*, 66 B.R. 63, 66-67 (Bankr. D. Md. 1986) (choosing to use a more liberal definition instead of the I.R.S. support formula test). The court finds that Mr. Dennis's minor children qualify as dependents under the statute.

The facts of the instant case are identical to those set forth in *Johnson* and the court finds that the holding of *Johnson* is controlling in this case. The Trustee argues that sections 544 or 549 of the Code somehow jeopardizes the Debtor's exemption claim because he failed to record his lien. Such provisions are not applicable to the facts of this case. It is, therefore,

ORDERED that the Trustee's objection to the Debtor's claim of exemption to the marital lien is denied.

DATED: SEP 18 2003



ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE

The Clerk shall furnish copies to:

Attorney for Debtor: Elizabeth S. Huffman, 1706 Fourteenth St., Lubbock, TX 79401; and

Chapter 7 Trustee: Max Ralph Tarbox, Law Offices of Max R. Tarbox, 3223 South Loop 289, Suite 414, Lubbock, TX 79423.

ELIZABETH S. HUFFMAN
SBN 00787734
LAW OFFICE OF E.S. HUFFMAN
1706 14th Street
LUBBOCK, TX 79401
(806) 762-2744
(806) 762-1143 FAX
e-mail: huffmanlaw@sbcglobal.net

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

IN RE:

BARRY LEE DENNIS,

Debtor

§
§
§
§
§

CASE NO. 03-50222-7

Hearing Date: August 20, 2003

Hearing Time: 1:30 pm

**JOINT PRE-HEARING ORDER ON TRUSTEE'S
OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**

COMES NOW, BARRY LEE DENNIS, Debtor, and the Chapter 7 Trustee, MAX TARBOX, and file this their Joint Pre-Hearing Order, and would show the Court as follows:

APPEARANCES

Debtor is Barry Lee Dennis who is represented by Ms. Elizabeth S. Huffman, Attorney at Law, 1706 14th Street, Lubbock, Texas 79401.

The Chapter 7 Trustee is Max Tarbox, 3223 South Loop 289, Ste. 414, Lubbock, Texas 79423.

STATEMENT OF THE NATURE OF THE CASE

Debtor seeks to exempt from his bankruptcy estate \$17,425.00 under 11 U.S.C. §522 (d)(1) and \$131.24 under 11 U.S.C. §522 (d)(5) of a lien against his formal marital residence awarded to him per a divorce decree entered in February 2000. The Debtor claims that his marital lien is an "aggregate interest" in the real property occupied by his former wife and minor children and thus qualifies for exemption under 11 U.S.C. §522 (d)(1). The Debtor also contends that his minor children are his dependents as he pays child support although he cannot claim his children as dependents on his federal income tax return per provisions

ORIGINAL

of said divorce decree.

JURISDICTION

This action is a "core" proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. §157 and §1334.

STIPULATION OF FACTS

1. Barry Lee Dennis filed his voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code on February 21, 2003.
2. The Debtor received his discharge in Bankruptcy Case No. 03-50222-rlj-7 on June 25, 2003.
3. The Chapter 7 Trustee filed his Objection to Debtor's Claim of Exemptions on May 14, 2003.
4. Barry Lee Dennis was divorced in February 2000 in Kent County, Michigan.
5. Pursuant to said divorce decree, Barry Lee Dennis was awarded a lien in the amount of \$25,000.00 (accruing interest at 4% per year) against the former marital residence located at 7271 Glendora Avenue, Jenison, MI 49428.
6. Barry Lee Dennis' former spouse and minor children reside in the former marital residence.
7. Barry Lee Dennis currently pays child support as ordered by the divorce decree.
8. Barry Lee Dennis has five children with the youngest being born on December 20, 1993. At this time, three of his five children are under the age of eighteen.
9. Barry Lee Dennis has remarried. He and his current spouse are renting an apartment. He does not claim an interest in a homestead other than his formal marital home.
10. Barry Lee Dennis admits the lien granted to him through the divorce decree has not been recorded.
11. The Quit Claim Deed executed by Barry Lee Dennis to his former spouse does reference the Judgement of Divorce.
12. Barry Lee Dennis does not claim his minor children as dependents on his federal income tax returns pursuant to the terms of the divorce decree.
13. Should the Court rule that Barry Lee Dennis is not entitled to an exemption under 11 U.S.C. §522 (d)(1), then he is entitled to his full wildcard exemption of \$9,042.79 under 11 U.S.C. §522 (d)(5).

EXHIBITS AND WITNESSES

The parties do not intend at this time to call any witnesses as the issues and facts have been stipulated. There is not a dispute to the facts, but simply a legal dispute. Parties would respectfully request that all exhibits listed and included with the Trustee's First Amended Witness and Exhibit List shall be deemed as admitted per agreement to expedite the proceedings.

ESTIMATED LENGTH OF HEARING

Parties agree that the trial of this matter should take no longer than fifteen (15) minutes.

ENTERED by this Court on the 20th day of August, 2003

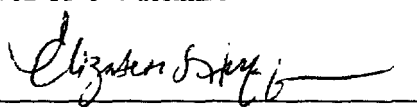
AUG 20 2003




THE HONORABLE ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE

Respectfully submitted,

LAW OFFICE OF ELIZABETH S. HUFFMAN
1706 14th Street
Lubbock, TX 79401
(806) 762-2744
(806) 762-1143- Facsimile

By: 

Elizabeth S. Huffman
State Bar No. 00787734
Attorney for Barry Lee Dennis

By: 

Max Tarbox
Chapter 7 Trustee
State Bar No. 19639950
3223 S. Loop 289, Ste. 414
Lubbock, TX 79423
(806) 780-5955